

HOUSE BILL NO. 149

INTRODUCED BY HEDGES

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIMINAL SENTENCE REVIEW PROCESS;
5 ALLOWING THE REVIEW DIVISION OF THE SUPREME COURT TO MEET IN ~~DEER LODGE, BILLINGS, OR~~
6 ~~OTHER~~ VARIOUS LOCATIONS; ALLOWING THE CHIEF JUSTICE OF THE SUPREME COURT TO
7 DESIGNATE A REPLACEMENT FOR A MEMBER OF THE REVIEW DIVISION THAT IS UNABLE TO SERVE;
8 ALLOWING A PERSON SENTENCED TO THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO
9 APPLY FOR SENTENCE REVIEW; REQUIRING CERTAIN NOTICES TO BE GIVEN TO A DEFENDANT'S
10 COUNSEL; CLARIFYING LANGUAGE; REQUIRING THE DECISION OF THE REVIEW DIVISION TO BE SENT
11 TO THE COUNTY ATTORNEY AND DEFENSE COUNSEL; AMENDING SECTIONS 46-18-901, 46-18-902,
12 46-18-903, 46-18-904, AND 46-18-905, MCA; AND PROVIDING AN EFFECTIVE DATE."

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 **Section 1.** Section 46-18-901, MCA, is amended to read:

17 **"46-18-901. Review division of the supreme court for -- review of sentences.** (1) The chief justice
18 of the supreme court of Montana shall appoint three district court judges to act as a review division of the
19 supreme court and shall designate one of ~~such the~~ judges to act as ~~chairman thereof~~ presiding officer of the
20 review division. The clerk of the Montana supreme court shall record ~~such the~~ the appointment and shall give notice
21 ~~thereof of the appointment~~ to the clerk of every district court.

22 (2) ~~This~~ The review division shall meet at least four times a year ~~or more~~ as its business requires, as
23 determined by the ~~chairman~~ presiding officer. The review division shall hold its meetings at ~~Deer Lodge, Billings,~~
24 ~~or other~~ locations as determined by the review division.

25 (3) The decision of ~~any~~ two of ~~such the~~ judges ~~shall be~~ is sufficient to determine any matter before the
26 review division.

27 (4) The review division may adopt any rules ~~which~~ that will expedite its review of sentences. The
28 division is also authorized to appoint a secretary ~~and such clerical help as it deems adequate and fix their~~
29 ~~compensation.~~"

30

1 **Section 2.** Section 46-18-902, MCA, is amended to read:

2 **"46-18-902. Interested judge not to act.** ~~No~~ A judge shall may not sit or act on a review of a sentence
3 that was imposed by ~~him~~ the judge. In any case in which review of a sentence imposed by any of the judges
4 serving on the review division is to be acted on by ~~said~~ the division or if any member is unavailable to serve, the
5 chief justice of the supreme court of Montana may designate another judge to act in place of ~~such~~ the judge."
6

7 **Section 3.** Section 46-18-903, MCA, is amended to read:

8 **"46-18-903. Application for review.** (1) ~~Any~~ A person sentenced to a term of 1 year or more in the
9 state prison or to the custody of the department of corrections by ~~any~~ a court of competent jurisdiction may within
10 60 days from the date ~~such~~ the sentence was imposed, except in ~~any~~ a case in which a different sentence could
11 not have been imposed, file with the clerk of the district court in the county in which judgment was rendered an
12 application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall
13 give written notice to the person sentenced and to the person's counsel of ~~his~~ the right to make ~~such~~ a request.
14 ~~Such~~ The notice ~~shall~~ must include a statement that review of the sentence may result in a decrease or increase
15 of the sentence within limits fixed by law.

16 (2) The clerk shall transmit ~~such~~ the application to the review division and shall notify the judge who
17 imposed the sentence ~~and~~, the county attorney of the county in which the sentence was imposed, and the
18 person's counsel of record. ~~Such~~ The judge may transmit to the review division a statement of ~~his~~ the judge's
19 reasons for imposing the sentence and shall transmit ~~such a~~ the statement within 7 days if requested to do so
20 by the review division.

21 (3) The review division may for cause shown consider any late request for review of sentence and may
22 grant ~~such~~ or deny the request.

23 (4) The filing of an application for review ~~shall~~ may not stay the execution of the sentence."
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25 **Section 4.** Section 46-18-904, MCA, is amended to read:

26 **"46-18-904. Procedure upon review.** (1) In each case in which an application for review is filed in
27 accordance with 46-18-903, the review division:

28 (a) (i) shall review the judgment ~~so far~~ as it relates to the sentence imposed, ~~either increasing or~~
29 ~~decreasing the penalty~~, and any other sentence imposed on the person at the same time; and

30 (ii) may order ~~such a~~ a different sentence or sentences to be imposed as could have been imposed at

1 the time of the imposition of the sentence under review, including a decrease or increase in the penalty; or

2 (b) may decide that the sentence under review should stand.

3 (2) In reviewing ~~any a~~ judgment, ~~said the~~ division may require the production of presentence reports
4 and any other records, documents, or exhibits relevant to ~~such the~~ review proceedings. The ~~appellant person~~
5 requesting the review may appear and has the right to be represented by counsel, and the state may be
6 represented by the county attorney of the county in which the sentence was imposed. Any other interested
7 person, including the sentencing judge, may attend and participate in the review proceedings.

8 (3) The sentence imposed by the district court is presumed correct. If the review division orders a
9 different sentence, the court sitting in any convenient county shall resentence the ~~defendant person~~ as ordered
10 by the review division. Time served on the sentence reviewed ~~shall be deemed~~ is considered to have been
11 served on the sentence substituted."
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13 **Section 5.** Section 46-18-905, MCA, is amended to read:

14 "**46-18-905. Decision -- finality, report of.** (1) The decision of the review division in each case ~~shall~~
15 be is final, and the reasons for ~~such the~~ decision ~~shall must~~ be stated ~~therein in the decision~~. The original of each
16 decision ~~shall must~~ be sent to the clerk of the court for the county in which the judgment was rendered, and a
17 copy ~~shall must~~ be sent to the judge who imposed the sentence reviewed, the person sentenced, the defense
18 counsel, the county attorney, and the principal officer of the institution in which ~~he the person~~ is confined.

19 (2) The decision ~~shall must~~ be reported in the Montana Reports."
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21 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2003.
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